APPENDIX A

THE SUPREME COURT OF SOUTH CAROLINA

In the Matter of Harry C. Brown,

Respondent.

ORDER

On December 4, 1996, this Court held a hearing to determine if respondent should be held in contempt for not timely filing the affidavit required by this Court's order of October 24, 1996. Based on the arguments at this hearing, it is apparent that respondent misconstrues the scope of our private reprimand of September 11, 1996.

We, therefore, find it appropriate to withdraw our earlier private reprimand in this matter and to substitute the following order in its place.[1] Finally, the rule to

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[1] Respondent has filed a petition for writ of certiorari with the United States Supreme Court seeking review of the September 11, 1996 private reprimand. We note that respondent did not file a petition for rehearing with this Court raising the issues he is now raising to the United States Supreme Court.

show cause is dismissed.

IT IS SO ORDERED.

_____C.J.
Ernest A. Finney, Jr.

_____A.J.
Jean H. Toal

_____A.J.
James E. Moore

_____A.J.
John H. Waller, Jr.

_____A.J.
E. C. Burnett, III

Columbia, South Carolina
December 18, 1996

APPENDIX B

THE SUPREME COURT OF SOUTH CAROLINA

In the Matter of Harry C. Brown,

Respondent.

ORDER

Respondent is a probate judge. We privately reprimand him for personally retaining compensation for performing marriages.

As a probate judge, respondent issues marriage licenses. S.C. Code Ann. § 20-1-230 (Supp. 1995) and § 14-23-1150 (Supp. 1995). Respondent has been remitting the fee for this license to the county treasurer.

Because he is authorized to administer oaths, respondent has the authority to perform marriages. S.C. Code Ann. § 14-23-300 (1976) and § 20-1-20 (1985). Respondent has been performing marriages during official office hours in the county courthouse, as well as at his home and other

locations after hours. For performing these marriages, respondent has collected a fee or honorarium (hereinafter compensation). The amount of the compensation has been of varying amounts up to $50 per ceremony, and respondent has received several thousand dollars of income a year for performing marriages.

Under Canon 2 of the Code of Judicial Conduct contained in Rule 501, SCACR, a judge must avoid impropriety and the appearance of impropriety. A judge is prohibited from engaging in financial or business dealings which exploit the judge's judicial position, Canon 5(C)()1), and a judge or a member of his family residing in his household may not accept a gift, bequest, favor or loan if the donor is a party or other person whose interests have or are likely to come before the judge. Canon 5(C)(4)(c). Further, a judge may not

receive compensation for quasi- or extra-judicial activities if the source of the payment gives the appearance of impropriety. Canon 6.[2]

In the present case, respondent is performing marriages for persons after they have obtained a license from respondent's office. The personal retention of payment for performing these marriages involves an exploitation of respondent's judicial office for his own financial gain. Even if it is assumed that these payments are gratuitously given as respondent alleged at the hearing

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[2] The misconduct alleged in the complaint occurred before the recent revision of the Code of Judicial Conduct became effective on October 1, 1996. Therefore, this opinion cites to the Code provisions as they existed prior to the revision.

The result reached in this opinion would be no different under the revised Code, since it contains provisions almost identical to those cited in this opinion. See Canon 2, Section 4D(1)(a), Section 4D(5)(h) and Section 4H of the revised Code of Judicial Conduct.

before the hearing masters, the personal retention of these payments is improper since it involves a gift from a person who has appeared before the respondent in his official capacity as a probate judge. Further, it gives rise to a strong appearance of impropriety for a probate judge to personally retain compensation for performing marriages. This is so regardless of whether the marriage takes place at the courthouse during office hours or at some other location after office hours, whether the marriage is performed in any other capacity such as a notary public or whether the marriage involves a marriage license issued in another country.

Respondent asserts that Act No. 1148, 1974 Acts 2632, permits him to accept compensation for performing marriages. Even assuming that this special legislation is

still valid [3] and that respondent's strained construction of this provision is correct, the statutory law of this State cannot authorize a judge to engage in conduct which is prohibited by the Code of Judicial Conduct.

Accordingly, we privately reprimand respondent for his misconduct in this matter. Further, we order respondent not to personally retain any further compensation for performing marriages, and direct him to remit to the county treasurer, within fifteen (15) days of the date of this opinion, all compensation he has received for performing marriages since September 11, 1996, and any compensation he may receive in the future for performing marriages. His failure to do so may result in a finding of

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[3] Examiner has argued that this 1974 Act is unconstitutional under Article III, § 7, of the South Carolina Constitution relating to home rule since it applies only to Jasper County.

civil or criminal contempt, or the imposition of a more severe form of discipline under Rule 502, SCACR.

IT IS SO ORDERED.

_____C.J.
Ernest A. Finney, Jr.

_____A.J.
Jean H. Toal

_____A.J.
James E. Moore

_____A.J.
John H. Waller, Jr.

_____A.J.
E. C. Burnett, III

Columbia, South Carolina
December 18, 1996

APPENDIX C

THE SUPREME COURT OF SOUTH CAROLINA

In the Matter of Harry C. Brown,

Respondent.

ORDER

Respondent asks this Court for a rehearing of its order of December 18, 1996. He asserts the order violates his right to equal protection and due process under both the state and federal constitutions.

Under Paragraph 25 of Rule 502, SCACR, respondent had ten (10) days to file a motion for rehearing. [1] This period expired on December 30, 1996. Respondent did not file a motion for rehearing with this Court until January 2, 1997. Accordingly, the motion for a rehearing is denied as being untimely.

Even if the motion for rehearing were

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[1] Since the expiration of the time to file the motion for rehearing in this matter, Rule 502, SCACR, has been completely revised.

timely, it is without merit. The crux of respondent's argument appears to be that it is impermissible for this Court to hold judges to higher standards than non-judges. This position is patently frivolous. By accepting the position of probate judge, respondent has made himself subject to the Code of Judicial Conduct which does establish much higher standards than those applicable to other members of our society. These higher standards are necessary to maintain the integrity and independence of, and the public's trust and confidence in, the judiciary. We find nothing in the state or federal constitution which prohibits this Court from applying more stringent standards to those who have elected to become judges in this State. See, Hayes v. Alabama Court of Judiciary, 437 So.2d 1276 (Ala. 1983)("Judges are not to be measured by standards of ordinary men and women.");

In re Piper, 271 Or. 726, 534 P.2d 159 (1975)(judges are held to greater standards of ethical conduct than even lawyers). Further, we find that the procedural due process afforded to respondent, to include the proceedings before the Judicial Standards Commission, the hearings before this Court, and the opportunity to file a motion for rehearing, are more than sufficient under the due process clauses of both the state and federal constitutions.

Respondent also continues to argue that by statute he is authorized to retain fees for performing marriages. First, we disagree with respondent's conclusion that Act No. 1148, 1974 Acts 2632, authorizes respondent to personally retain fees for performing marriages. Second, even if we were to accept respondent's strained interpretation of this statute, we adhere to our position that a statute cannot authorize

a judge to engage in conduct which is prohibited by the Code of Judicial Conduct. To hold otherwise would be to seriously diminish the inherent authority given to this Court by the South Carolina Constitution to regulate the conduct of judges.

The motion for rehearing is denied.

IT IS SO ORDERED.

_____ C.J.
Ernest A. Finney, Jr.

_____ A.J.
Jean H. Toal

_____ A.J.
James E. Moore

_____ A.J.
John H. Waller, Jr.

_____ A.J.
E. C. Burnett, III

Columbia, South Carolina
January 9, 1997